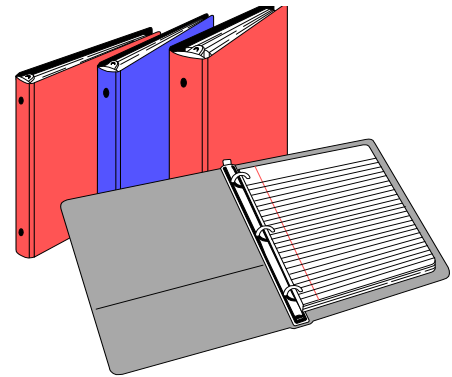


CHAPTER III. NATIONAL OBJECTIVES, ELIGIBLE ACTIVITIES AND INDIVIDUAL FEDERAL COMPLIANCE REQUIREMENTS

A. ELIGIBLE GRANT APPLICANTS

Consistent with federal law, **eligible applicants** for the State CDBG program are:

- ◆ **Incorporated cities and towns with populations of less than 50,000 excluding those in Salt Lake County;**
- ◆ **All of Utah's counties except Salt Lake County; and, unique to Utah, are the**
- ◆ **Units of local governments recognized by the Secretary of HUD that include six of the seven associations of government, excluding the Wasatch Front Regional Council.**



By federal law the state may only fund the applicants mentioned above. For convenience and mutual benefit, combinations of the above may enter into a subcontractor's agreement where one applicant is regarded as a primary beneficiary acting as the grantee entity for both applicants. Other users of CDBG funds such as non-profit and for-profit corporations, councils of government, housing authorities, and special service districts must apply through and enter into subcontractor agreements with an eligible applicant who also derives a primary benefit. These entities must be incorporated in compliance with all applicable laws and regulations. The state encourages units of general local government to cooperate with each other as well as other entities to engage in eligible activities.

1. Sponsorship of a Non-eligible Recipient – Eligible grantees who agree to sponsor a non-eligible sub-recipient must realize that such an agreement needs careful consideration before being entered into. Agreeing to sponsor a sub-recipient does not negate the legally eligible grantee of the need to comply with state and federal laws. The sponsoring entity needs to remember that they and the state will sign the contract that will be prepared, and as such they are legally bound to comply with all pertinent laws and regulations, as is their sub-recipient.

The responsibility for “who does what” in such an arrangement will depend on each entity, the project or activity, and the degree of comfort that the sponsor has with the sub-recipient. When the comfort level is high the need for oversight by the legal recipient may be reduced but should never be completely done away with. For instance, the OMB circular appropriate for the type of organization ultimately using the funds determines compliance with fiscal requirements. The state is only responsible to ensure compliance by the sponsoring entity, which means that the sponsoring entity should either make sure they are comfortable with the accounting procedures used by the sub-recipient or should

do a periodic review of the budget and expenditures of that entity while the CDBG grant is in process. The state maintains contact with sub-recipients during the course of the project through phone, written and in-person site visits. These technical assistance efforts are the state's way of assisting the sponsoring entity with some of its oversight needs. However, sponsors should realize that final compliance by the sub-recipient ultimately lies with them.

Sponsorship responsibilities include holding the pre-application public hearings, the signing of the application and contracts, compliance with all civil rights requirements including compliance with handicap accessibility laws, and a certain amount of environmental oversight. Compliance with any labor related laws is usually reviewed at the sub-recipient level, but the sponsor may request involvement to ensure that any local or jurisdictional requirements related to procurement and construction activity are understood and will be followed by the sub-recipient. If the sponsor has retained any administrative costs for a CDBG contract the sponsor's financial records will also be reviewed. Sponsorship also requires assistance with the completion of the final monitoring and the close out packet at the end of the project. The sponsor will be monitored at the end of the project in addition to the sub-recipient to ensure this compliance.

2. Public Service – Public service providers, traditionally non-profit organizations, are encouraged to apply for CDBG funds for capital improvements and major equipment purchases. Examples are delivery trucks, furnishings, fixtures, computer equipment, construction, remodeling and facility expansion. State policy prohibits the use of CDBG funds for operating and maintenance expenses. This includes paying administrative costs, salaries, etc. No more than 15 percent of the state's yearly allocation of funds may be expended for public service activities.

B. NATIONAL OBJECTIVE COMPLIANCE REQUIREMENTS

Each applicant must identify and meet only **ONE** of the three national objectives listed below even though the project might be able to qualify under other national objectives.

1. NATIONAL OBJECTIVE #1 - LOW AND MODERATE INCOME BENEFIT

"The projected use of funds has been developed so as to give maximum feasible priority to activities which will benefit low/moderate income (LMI) families. . ."

LMI. (Low/Moderate Income) families are defined as those families whose income does not exceed 80 percent of the county median income for 2007 or 80 percent of the median income of the entire non-metropolitan area of the state of Utah, whichever is higher. See Appendix C for delineation of 80 percent of county median income by family size. Appendix D contains a listing of all cities and counties who presently qualify based on the 2000 Census as having at least 51 percent low or moderate-income persons. These entities do not need to conduct a survey **if the project is intended to benefit all persons**

in the community. In order to meet this national objective the applicant must demonstrate a benefit to low and moderate income in one of the following ways:

a. Economic Development: The activity must:

- (1) Be carried out in a neighborhood where a substantial number (51 percent) of LMI persons reside; or
- (2) Employ persons, a majority of whom are LMI; or
- (3) Make training available to LMI persons to help them qualify for higher skilled employment; or
- (4) Engage in advertising and recruitment efforts targeted to LMI persons.

Documentation necessary to meet LMI benefit: Determine which of the four E.D. activities the project will address. The grantee must determine the best method by which to substantiate this determination and provide appropriate documentation. Possible methods include:

- ♦ Identification of the specific neighborhood and an income survey of the project's intended beneficiaries;
- ♦ Income certifications obtained from individuals hired;
- ♦ Documentation of the type of training to be provided;
- ♦ Documentation of efforts to advertise and recruit LMI persons.

b. Site Specific activities: At least 51 percent of the direct beneficiaries of the proposed project must consist of families whose **TOTAL FAMILY INCOME** does not exceed 80 percent of the county median income for the current program year as demonstrated by the income figures provided in Appendix C, or at least 51 percent of the beneficiaries of the proposed project consist of families whose **TOTAL FAMILY INCOME** does not exceed 80 percent of the median income for the entire non-metropolitan area of the State of Utah. See Appendix C for this statewide median income figure.

When either of the methods below is used the "project area" must first be specifically determined and identified before the survey is performed.

- ♦ **If a site specific project will provide direct benefit to the entire community** the applicant may use the 2000 census data shown as Appendix D rather than preparing an original survey. The applicant will be required to demonstrate how the project benefits the entire community. All relevant census data to verify this information must be included in the application.

♦ **If the site-specific project will directly benefit only a portion of the community** an original survey of the defined project area must be done to determine LMI population in that specific area. If a survey is to be performed, the survey must be conducted following the state approved methodology found in Appendix E. This method **must** be used if the survey is to be accepted. The burden of proof is on the applicant to carry out the survey in an acceptable manner. This survey will be accepted for the current year's application and for two (2) consecutive application cycles, if the subsequent applications are for a project whose boundaries and/or beneficiaries are identical to those in the original survey. If the survey shows that 60 percent or more of the beneficiaries are LMI then the survey may be good for five (5) consecutive years if the beneficiaries remain the same.

c. **City or countywide activities:** At least 51 percent of the direct beneficiaries of the proposed project must consist of families whose **TOTAL FAMILY INCOME** does not exceed 80 percent of the county median income for the current program year as demonstrated by the income figures provided in Appendix C, **OR** at least 51 percent of the beneficiaries of the proposed project must consist of families whose **TOTAL FAMILY INCOME** does not exceed 80 percent of the median income for the entire non-metropolitan area of the state of Utah. See Appendix C for this state median income figure.

♦ If an applicant's jurisdiction has been identified in Appendix D, which is a list of all cities and counties within the state who qualify to use the 2000 statewide, non-metropolitan figures that document them as 51 percent or more LMI, a copy of the list must be attached and included with the application.

♦ Applicants may perform a new community survey following the instructions in Appendix E.

d. **Limited Clientele activities:** An essential feature of this type of activity is that all benefits will be provided to a **clearly** specific clientele who are **generally presumed** to be 51 percent or more LMI and are activities NOT available to all residents.

(Note: In order to pay connection fees for LMI individuals under this activity, the following must be clarified: HUD views the payment of assessed connection fees as part of the overall project. Whether or not CDBG monies are used for the construction, HUD rules and regulations apply to the construction of the improvements even though connection fees will be paid only for low/moderate income (LMI) persons in the community. If grantees wish to construct the facility and pay connection fees, the entire project must first be shown to meet a National Objective and to have met and addressed all other CDBG requirements. If grantees wish to pay only connection fees for a utility that is being constructed

with other funds, the same requirements apply. If grantees wish to pay connection fees for a utility that has already been constructed they may do so only if they can show that the installation of the utility was originally carried out in compliance with requirements applicable to CDBG activities including citizen participation, compliance with environmental and labor requirements and that it meets a national objective.)

Lateral connections for those who are certified as LMI are considered eligible as rehabilitation. In no case, may CDBG funds be used to pay connection fees for non-LMI individuals.

- ◆ If a population is targeted to be the beneficiary of a project, the project scope must demonstrate that the benefits provided to the population are NOT available to all residents, and that the targeted population meets one of the criteria below:

PRESUMED LMI GROUPS

- ◆ Abused Children ◆ Battered Spouses ◆ Migrant Farm Workers
- ◆ Elderly Persons (Defined by HUD as age 62 or over)
- ◆ Illiterate Adults ◆ Homeless Persons ◆ Persons living with AIDS
- ◆ Severely Disabled Adults – use wheelchair or special aid for at least 6 months, unable to perform functional activities including seeing, hearing, or walking, are prevented from working or have autism, cerebral palsy, alzheimer's, senility, dementia or mental retardation.

1) Benefit is specifically targeted to a group generally presumed to be 51 percent or more LMI, unless there is evidence to the contrary. Examples of such controversial indicators may be the lifestyle of the community or the known income figures in the area in which the group resides, the construction of a facility that would not ordinarily be utilized by LMI or whose use may be cost prohibitive for LMI, etc. The state is responsible for ensuring that adequate documentation is obtained where there is the possibility of such evidence to the contrary OR

(2) Information must be provided on family size and income and must show that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate-income limit (e.g., programs being operated where LMI income certification is routinely requested to allow participation in the program);

(3) Benefits provided exclusively to low and moderate-income persons based on their income eligibility, e.g., new housing constructed whose occupancy is limited to LMI;

(4) The nature of the activity and location supports a conclusion that 51 percent or more LMI (e.g., a day care center); public housing projects assisted with other HUD funds;

(5) Removal of architectural barriers to the mobility of elderly and disabled.

♦ If the applicant is proposing a project to be designed specifically to benefit LMI persons such as those groups identified above, in the form of:

- LMI housing
- senior citizen centers
- Payment of special assessments, or
- Economic development in the form of job creation, etc.,

the project must be developed and presented in a manner that demonstrates this objective. Again, the CDBG staff prior to pre-application preparation must clear the determination of a project acceptable under this definition.

2. NATIONAL OBJECTIVE #2 - AIDING IN THE PREVENTION OR ELIMINATION OF SLUMS OR BLIGHT

This national objective may be met in one of three possible ways explained below. The state staff must determine compliance with this objective prior to rating and ranking by the RRC.

a. Perform Activities in a Slum or Blighted Area: An activity will be considered to address prevention or elimination of slums or blight in an area if:

(1) The area, delineated by the recipient, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law. Utah Code Annotated 1953, 17B-4-604, states that areas selected must be characterized by buildings or structures considered unsafe or unfit to occupy, or are conducive to ill health, transmission of disease, infant mortality, juvenile delinquency and crime because of any three or more of the following factors, which the applicant must demonstrate to be the case:

- (a) defective character of physical construction;
- (b) high density of population and overcrowding;
- (c) inadequate ventilation, light, or spacing between buildings;
- (d) mixed character and shifting of uses, resulting in obsolescence, deterioration, or dilapidation;
- (e) economic deterioration or continued disuse;
- (f) lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours

and other physical characteristics of the ground and surrounding conditions;

(g) inadequate sanitation or public facilities which may include streets, open spaces, and utilities;

(h) areas that are subject to being submerged by water; and

(i) existence of any hazardous or solid waste, defined as any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment under state or federal law or regulation.

AND

(2) Throughout the area there are a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general state of deterioration. The applicant must document by written commentary and/or photographs that, **AT THE TIME OF APPLICATION**, a substantial number of deteriorated or dilapidated buildings or improvements throughout the area existed.

AND

(3) Documentation must be maintained by the recipient on the boundaries of the area, the condition that qualified the area at the time of its designation, and the percentage of the area that is deteriorated.

AND

(4) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area.

In cases where evidence of slum and blighted conditions are marginal or the deteriorated conditions cannot readily be seen, i.e., buried water or sewer lines or septic system failure, etc., an unbiased, qualified, third party must be consulted for purposes of verification during the pre-application process. In accordance with the Utah Code previously cited, a third party must find evidence that supports the condition as being unsafe, and is conducive to a public health threat and needs to be rectified in the best interest of the public. This third party must be the Utah State Department of Environmental Quality in the case of water and sewer issues. In other cases, the HCD will use the appropriate state or federal agency to make this determination.

Documentation required to meet "AREA" Slum/Blight:

(a) Additional documentation must include:

- 1) Description of the area boundaries;
- 2) Declaration of the area as slum or blighted, based on one or more of the above characteristic(s);
- 3) Be dated; and
- 4) Signed by the applicant's chief official.

(b) The scope of work as detailed in the application must address the slum/blight characteristics selected above and outline the solution the CDBG funds will provide in addressing them.

b. Perform Activities on a Spot basis: Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety. To be considered to be detrimental to public health and safety, a condition must pose a threat to the *public in general*.

Documentation required to meet "SPOT" Slum/Blight:

- (1) The scope of work detailed in the application must provide a description of the specific condition of blight or physical decay treated; and
- (2) Under this standard, any *rehabilitation performed to non-LMI households is limited to that necessary to eliminate specific conditions detrimental to public health and safety* and must be acknowledged in the scope of work as detailed in the application.

OR

- c. Urban Renewal Completion:** Eligible activities to be performed must be included in the urban renewal plan most recently approved by HUD under Title I of the Housing Act of 1949, as amended (42 U.S.C. 1450 et. seq.) which are necessary to complete an urban renewal project.

Documentation required to meet Slum/Blight Urban Renewal Completion:

A copy of the urban renewal plan must accompany the application.

3. NATIONAL OBJECTIVE #3 - URGENT, HEALTH, WELFARE NEEDS

To comply with the national objective of meeting community development needs having a particular urgency, an activity must be designed to alleviate existing conditions which the local government certifies and state determines:

- ◆ Pose a serious and immediate threat to the health or welfare of the community,
- ◆ Are of recent origin or recently became urgent,
- ◆ The state grant recipient is unable to finance the activity on its own, and
- ◆ Other sources of funding are not available to carry out.

The determination of a jurisdiction's ability to meet these criteria will be based on the submission, **at time of the application**, of documentation from the appropriate federal or state agency certifying an immediate threat to health and welfare. Resources from other federal, local or state programs may be used to match or participate in order to relieve the threat. CDBG funds may only be used to complete the funding needed for projects that have maximized all other available funding sources (**GAP** funding).

Documentation Required to meet Urgent Health and Welfare Needs:

A proposed project will **ONLY** be considered under this national objective if **ALL FOUR** of the following requirements are met **at the time of application submission to the RRC:**

- a. A description of the nature and degree of seriousness of the conditions requiring assistance. The determination of "immediate threat" has been made in consultation with an appropriate state or federal agency. The documentation from such agency **must** be included with the application and **must** demonstrate that there is an immediate threat to health and welfare.
- b. Evidence confirming that other financial resources to alleviate the need were not available. The documentation must include refusals or maximization of assistance from other agencies, not just an indication that they have been contacted.
- c. Information on the timing of the development of the serious condition. A condition will generally be considered to be of recent origin if it is developed or became critical within 18 months preceding the state grant recipient's certification. Documentation certifying this fact must be included with the application.

- d. Evidence that the state grant recipient certified that the CDBG activity was designed to address the urgent need.

C. CONSISTENCY WITH THE CONSOLIDATED PLAN

Every applicant is required to document that the project for which they are applying is consistent with that community's and the region's **current** version of the **CONSOLIDATED PLAN**. Applicants must describe how that consistency is accomplished. Compliance with the requirement will be determined regionally, **PRIOR TO RATING AND RANKING**. The regional determination will be subject to validation by the state.

The applicant must include evidence that the community was and continues to be a willing partner in the development of the regional consolidated planning process. The project or project type must be a high priority in the investment component of the plan and must help fulfill the long term or strategic goals of both the regional and local plans. The allocation of resources must be projected at least 5 years into the future and applications should be consistent with the long-term direction of the plan.

Each Association of Government staff is required to review the regional consolidated plan submitted by their office on behalf of their communities to ensure that each plan includes a brief narrative identifying the process used to determine the priorities contained in the plan, in addition to any capital improvement lists submitted.

D. INCLUSIVE FEDERAL COMPLIANCE REQUIREMENTS

1. 70 PERCENT LOW/MODERATE INCOME COMPLIANCE: Assurance must be made to HUD that over each two year grant period at least 70 percent of the entire state CDBG allocation will support activities that benefit low and moderate income persons. To do this, the State must receive adequate information regarding the LMI population proposed to be assisted by each grantee regardless of the National Objective selected (see application form).

This requirement does not affect the activities selected by applicants. The State will continue to fund any one of the three National Objectives (low to moderate income benefit, slum and blight elimination, or urgent need).

2. OTHER APPLICABLE FEDERAL REQUIREMENTS: Applicants must be in compliance with all applicable federal and state regulations and overlay statutes. The federal statutes that apply to the program include:

- Davis-Bacon Fair Labor Standards Act (40 US27600000a-276a-5);
- Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333);
- Title VI of the Civil Rights Act of 1964 (42 USC 200(d));
- Title VIII of the Civil Rights Act of 1968 (42 USC 3601);
- Section 504 of the Rehabilitation Act of 1973 (29 USC 794);

- Section 3 of the Housing and Urban Development Act of 1968, as amended (12 USC 1701(u));
- Section 109 of the Housing and Urban Development Act of 1974, as amended (12 USC 5309);
- Age Discrimination Act of 1975, as amended (42 USC 6101);
- Architectural Barriers Act of 1968, as amended (42 USC 4151)
- Section 504 of the Rehabilitation Act of 1973, as amended (29 USC 792);
- Americans with Disabilities Act of 1991
- Equal Employment Opportunity (Executive Order 11246, September 24, 1965);
- Equal Opportunity in Housing (Executive Order 11063, as amended by Executive Order 12259);
- The Hatch Act (5 USC 1501 et seq.);
- The National Environmental Policy Act of 1969;
- Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and Amendments of 1987
- Title IV of the Lead-Based Paint Poisoning Prevention Act (42 USC 4831);
- Section 3;
- HUD Reform Act;
- Office of Management and Budget Circulars:
 - A-87--Cost Principles for State and Local Governments and 24 CFR Part 85, Administrative Requirements for Grants and Cooperative Agreements to State, Local and Federally Recognized Indian Tribal Governments
 - A-128--Single Audit Act;
- Section 104(d) of the Housing and Urban Development Act of 1974, as amended ("Barney Frank" Anti-Displacement amendment).
- Residential Lead Based Paint Hazard Reduction Act of 1992 and Final Rule, September 1999.

PLEASE NOTE THAT ADDITIONAL FEDERAL OVERLAY STATUTES AND REGULATIONS MAY APPLY TO THE STATE PROGRAM IF DIRECTED BY HUD AND CONGRESS

E. ELIGIBLE ACTIVITIES

An ELIGIBLE PROJECT must be selected from 42 U.S.C. Chapter 69, Sec. 5305 (Section 105 of the Act) of the Housing and Community Development Act of 1974 as amended. A copy of Section 105 of the Act is reprinted below. The eligible activity selected must be identified in the application. (See application form).

Section 105 (a): Activities assisted under this title may include only:

(1) The **acquisition of real property** (including air rights, water rights, and other interests therein) which is:

- (A) blighted, deteriorated, deteriorating, undeveloped, or inappropriately developed from the standpoint of sound community development and growth;

- (B) appropriate for rehabilitation or conservation activities;
- (C) appropriate for the preservation or restoration of historic sites, the beautification of urban land, the conservation of open spaces, natural resources, and scenic areas, the provision of recreational opportunities, or the guidance of urban development;
- (D) to be used for the provision of public works, facilities, and improvements eligible for assistance under this title; or
- (E) to be used for other public purposes;

(2) The **acquisition, construction, reconstruction, or installation** (including design features and improvements with respect to such construction, reconstruction, or installation that promote energy efficiency) **of public works, facilities** (except for buildings for the general conduct of government), **and site or other improvements;**

(3) Code **enforcement** in deteriorated or deteriorating areas in which such enforcement, together with public or private improvements or services to be provided, may be expected to arrest the decline of the area;

(4) **Clearance, demolition, removal, reconstruction, and rehabilitation** (including rehabilitation which promotes energy efficiency) **of buildings* and improvements** (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties, and including the renovation of closed school buildings);

*Entities selecting 105(a)(4) for the purpose of performing residential rehabilitation must have regulations and policies in force to comply with HUD's Final Rule regarding Lead Based paint.

(5) Special projects directed to **the removal of material and architectural barriers, which restrict the mobility, and accessibility of elderly and handicapped persons;**

6) **Payments to housing owners for losses of rental income** incurred in holding for temporary periods housing units to be utilized for relocation of individuals and families displaced by activities under this title;

(7) **Disposition** (through sale, lease, donation or otherwise) **of any real property acquired pursuant to this title** or its retention for public purposes;

(8) **Provisions of public services, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, energy conservation, welfare or recreation needs**, if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding

the date of submission of the statement with respect to which funds are to be made available under this title, and which are to be used for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the unit of general local government, except that (or in the case of non-entitled communities not more the 15 per centum statewide) under this title including program income may be used for activities under this paragraph unless such unit of general local government used more than 15 percent of the assistance received under this title for fiscal year 1982 or fiscal year 1983 for such activities (excluding any assistance received pursuant to Public Law 98-8), in which case such unit of general local government may use not more than the percentage or amount of such assistance used for such activities for such fiscal year, whichever method of calculation yields the higher amount.

(9) Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of activities assisted under this title;

(10) Payment of the cost of completing a project funded under title I of the Housing Act of 1949; NOT APPLICABLE TO THE STATE SMALL CITIES PROGRAM.

(11) Relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate;

(12) Activities necessary:

(A) To develop a comprehensive community development plan, and

(B) To develop a policy-planning-management capacity so that the recipient of assistance under this title may more rationally and effectively

- (i) determine its needs,**
- (ii) set long-term goals and short-term objectives,**
- (iii) devise programs and activities to meet these goals and objectives,**
- (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and**
- (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;**

(13) Payment of reasonable administrative costs related to establishing and administering federally approved enterprise zones and payment of reasonable administrative costs and carrying charges related to (A) administering the HOME program under title II of the Cranston-Gonzalez National Affordable Housing Act; and (B) the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities, and including the carrying out of activities as described in section 701(e) of the Housing Act of 1954 on the date prior to the date of enactment of the Housing and Community Development Amendments of 1981;

(14) Provisions of assistance **including loans** (both interim and long-term) **and grants for activities that are carried out by public or private nonprofit entities**, including

(A) Acquisition of real property;

(B) Acquisition, construction, reconstruction, rehabilitation, or installation of

(i) public facilities (except for buildings for the general conduct of government), site improvements, and utilities,¹ and

(ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and

(C) Planning; (see also Section 105(c)(1))

(15) **Assistance to neighborhood-based nonprofit organizations, local development corporations, nonprofit organizations serving the development needs of the communities in non-entitlement areas, or entities organized under section 301(d) of the Small Business Investment Act of 1958 to carry out a neighborhood revitalization or community economic development or energy conservation project** in furtherance of the objectives of section 101(c), **and assistance to neighborhood-based nonprofit organizations, or other private or public nonprofit organizations, for the purpose of assisting, as part of neighborhood revitalization or other community development, the development of shared housing opportunities** (other than by construction of new facilities) **in which elderly families** (as defined in section 3(b)(3) of the United States Housing Act of 1937) benefit as a result of living in a dwelling in which the facilities are shared with others in a manner that effectively and efficiently meets the housing needs of the residents and thereby reduces their cost of housing;

¹In order to pay connection fees for individuals under this activity the following clarification is provided: The payment of assessed connection fees is viewed as part of a larger project, the construction of the utility, whether or not CDBG monies are used for the construction and even though connection fees will be paid only for low/moderate income (LMI) persons in the community. Therefore, if applicants wish to construct the facility and pay connection fees, the entire project must first be shown to meet a National Objective and to have met and addressed all other CDBG requirements. If applicants wish to pay only connection fees for a utility that is being constructed with other funds, the same requirements apply. If applicants wish to pay connection fees for a utility that has already been constructed, they may do so only if they can show that the installation of the utility was originally carried out in compliance with requirements applicable to CDBG activities including citizen participation, compliance with environmental and labor requirements and that it meets a National Objective.

In no case, may CDBG funds be used to pay connection fees for non-LMI individuals.

(16) **Activities necessary to the development of energy use strategies** related to recipient's development goals, to assure that those goals are achieved with maximum energy efficiency, including items **such as--**

(A) **an analysis** of the manner in, and the extent to, which energy conservation objectives will be integrated into local government operations, purchasing and service delivery, capital improvements, budgeting, waste management, district heating and cooling, land use planning and zoning, and traffic control, parking, and public transportation functions; and

(B) **a statement of the actions** the recipient will take to foster energy conservation and the use of renewable energy resources in the private sector, including the enactment and enforcement of local codes and ordinances to encourage or mandate energy conservation or use of renewable energy resources, financial and other assistance to be provided (principally for the benefit of low- and moderate-income persons) to make energy conserving improvements to residential structures, and any other proposed energy conservation activities;

(17) Provision of **assistance to private, for-profit entities**, when the assistance is appropriate **to carry out an economic development project** (that shall minimize, to the extent practicable, displacement of existing businesses and jobs in neighborhoods) that—

(A) creates or retains jobs for low- and moderate-income persons;

(B) prevents or eliminates slums and blight;

(C) meets urgent needs;

(D) creates or retains businesses owned by community residents;

(E) assists businesses that provide goods or services needed by, and affordable to, low- and moderate-income residents; or

(F) provides technical assistance to promote any of the activities under subparagraphs (A) through (E); (see also Section 105(c)(1))

(18) It should be noted that Section 105(a)(18) **rehabilitation or development of housing** under section 17 of the United States Housing Act of 1937 is not applicable to states: Section 17 of the 1937 Act has since been repealed. **Please refer to Section 105(a)(4).**

(19) Provision of **technical assistance to public or nonprofit entities to increase the capacity of such entities to carry out eligible neighborhood revitalization or economic development activities**, which assistance shall not be considered a planning cost as defined in paragraph (12) or administrative cost as defined in paragraph (13);

(20) **Housing services**, such as housing counseling in connection with tenant-based rental assistance and affordable housing projects assisted under title II of the Cranston-Gonzalez National Affordable Housing Act, energy auditing, preparation of work specifications, loan processing, inspections, tenant selection, management of tenant-based rental assistance, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in housing activities assisted under title II of the Cranston-Gonzalez National Affordable Housing Act;

(21) Provisions of **assistance** by recipients under this title **to institutions of higher education** having a demonstrated capacity to carry out eligible activities under this subsection for carrying out such activities;

(22) Provisions of **assistance to public and private organizations, agencies, and other entities** (including nonprofit and for-profit entities) to enable such entities **to facilitate economic development by-**

(A) **providing credit** (including providing direct loans and loan guarantees, establishing revolving loan funds, and facilitating peer lending programs) for the establishment, stabilization, and expansion of micro enterprises;

(B) **providing technical assistance, advice, and business support services** (including assistance, advice, and support relating to developing business plans, securing funding, conducting marketing, and otherwise engaging in micro enterprise activities) **to owners of micro enterprises and persons developing micro enterprises;** and

(C) **providing general support** (such as peer support programs and counseling) **to owners of micro enterprises and persons developing micro enterprises;**

(23) Activities necessary to **make essential repairs and to pay operating expenses necessary to maintain the habitability of housing units acquired through tax foreclosure proceedings** in order to prevent abandonment and deterioration of such housing in primarily low and moderate income neighborhoods; and

(24) Provision of **direct assistance to facilitate and expand home ownership among persons of low and moderate income** (except that such assistance shall not be considered a public service for purposes of paragraph (8)) by using such assistance to--

(A) **subsidize interest rates and mortgage principal amounts** for low- and moderate-income home buyers;

(B) **finance the acquisition** by low- and moderate-income homebuyers **of housing that is occupied by the home buyers;**

(C) **acquire guarantees for mortgage financing** obtained by low- and moderate-income home buyers from private lenders (except that amounts received under this title may not

be used under this subparagraph to directly guarantee such mortgage financing and grantees under this title may not directly provide such guarantees);

(D) **provide up to 50 percent of any down payment** required from low- or moderate-income home buyer; or

(D) **pay reasonable closing costs** (normally associated with the purchase of a home) incurred by a low- or moderate-income homebuyer.

(25) **Lead-based paint hazard evaluation and reduction**, as defined in section 1004 of the Residential Lead-Based Paint Hazard Reduction Act of 1992;

SECTION 105(b): Upon request of the recipient of assistance under this title, the Secretary may agree to perform administrative services on a reimbursable basis on behalf of such recipient in connection with loans or grants for the rehabilitation of properties as authorized under subsection (a) (4).

SECTION 105(c)(1): In any case in which an assisted activity described in paragraph (14) or (17) of subsection (1) is identified as principally benefiting persons of low and moderate income, such activity shall:

(A) be carried out in a neighborhood consisting predominately of persons of low and moderate income and provide services for such persons; or

(B) involve facilities designed for use predominantly by persons of low and moderate income; or

(C) involve employment of persons, a majority of whom are persons of low and moderate income.

SECTION 105(c)(2)(A): In any case in which an assisted activity described in subsection (a) is designed to serve an area generally and is clearly designed to meet identified needs of persons of low and moderate income in such area, such activity shall be considered to principally benefit persons of low and moderate income if:

[i] not less than 51% of the residents of such area are persons of low and moderate income;

[ii] in any metropolitan city or urban county, the area served by such activity is within the highest quartile of all areas within the jurisdiction of such city or county in terms of the degree of concentration of persons of low and moderate income; or

[iii] the assistance for such activity is limited to paying assessments (including any charge made as a condition of obtaining access) levied against properties owned and occupied by persons of low and moderate income to recover the capital cost for a public improvement.

SECTION 105(c)(2)(B): The requirements of subparagraph (A) do not prevent the use of assistance under this title for the development, establishment of a uniform emergency telephone number system if the Secretary determines that:

- [i] such system will contribute substantially to the safety of the residents of the area served by such system;
- [ii] not less than 51% of the users of the system will be by persons of low and moderate income; and
- [iii] other Federal funds received by the grantee are not available for the development, establishment and operation of such system due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the grantee. The grantee of the cost of the development, establishment, and operation of such system that may be paid from assistance under this title and that is considered to benefit low and moderate income persons is the percentage of the population to be served that is made up of persons of low and moderate income.

SECTION 105(c)(3): Any assisted activity under this title that involves the acquisition or rehabilitation of property to provide housing shall be considered to benefit persons of low and moderate income only to the extent such housing will, upon completion, be occupied by such person.

SECTION 105(c)(4): For purposes of subsection (c) (1) (C):

- (A) if an employee resides in, or the assisted activity through which he or she is employed, is located in a census tract that meets the federal enterprise zone eligibility criteria, the employee shall be presumed to be a person of low or moderate income; or
- (B) if an employee resides in a census tract where not less than 70% of the residents have incomes at or below the 80% of the area median, the employee shall be presumed to be a person of low or moderate income.

SECTION 105(d): Training Program - The Secretary shall implement, using funds recaptured pursuant to Section 119 (o), an ongoing education and training program for officers and employees of the department, especially officers and employees of area and other field offices of the department, who are responsible for monitoring and administering activities pursuant to paragraphs (14), (15), and (17) of subsection (A) for the purposes of ensuring that

- (A) such personnel possess a thorough understanding of such activities; and
- (B) regulations and guidelines are implemented in a consistent fashion.

SECTION 105(e): Guidelines for evaluating and selecting Economic Development Projects:

(1) Establishment: The Secretary shall establish, by regulation, guidelines to assist grant recipients under this title to evaluate and select activities described in Section 105 (A) (14), (15), and (17) for assistance with grant amounts. The Secretary does not base a determination of eligibility of the use of funds under this title for such assistance solely on the basis that the recipient fails to achieve one or more of the guidelines' objectives as stated appropriate in paragraph (2).

(2) Project Costs and Financial Requirements: The guidelines established under this subsection shall include the following objectives:

(A) The project costs of such activities are reasonable.

(B) To the extent practicable, reasonable financial support has been committed for such activities from non-Federal sources prior to the disbursement of Federal funds.

(C) To the extent practicable, any grant amounts to be provided for such activities do not substantially reduce the amount of non-Federal financial support for the activity.

(D) Such activities are financially feasible.

(E) To the extent practicable, such activities provide not more than a reasonable return on investment to the owner.

(F) To the extent practicable, grant amounts used for the costs of such activities are disbursed on a pro rate basis with the amounts of other sources.

(3) Public Benefit: The guidelines established under this subsection shall provide that the public benefit provided by the activity is appropriate relative to the amount of assistance provided with grant amounts under this title.

SECTION 105(f): Assistance to for-profit entities - In any case in which an activity described in paragraph (17) of subsection (A) is provided assistance such assistance shall not be limited to activities for which no other forms of assistance are available or could not be accomplished but for that assistance.

GAO Study - The Comptroller General of the United States shall conduct a study of the use of grant amounts under Title 1 of the Housing and Community Development Act of 1974 for activities described in paragraphs (14), (15), and (17) of section 105 (a) of such Act. The study shall evaluate whether the activities for which such amounts are being used under such paragraphs further the goals and objectives of such program, as established in section 101 of such Act.

The Comptroller General shall submit a report to the Congress regarding the findings of the study not later than the expiration of the 18-month period beginning on the date of the enactment of this Act. The report shall include recommendations of:

- (1) Any administrative or legislative actions that may be taken to ensure that such grant amounts are properly and efficiently used for economic development activities, and
- (2) Criteria by which to evaluate the effectiveness of activities assisted under paragraphs (14), (15), and (17) of such section 105 (a).

Enhancing Job Quality - Not later than 1 year after the date of enactment of this Act, the Comptroller General shall submit to the Congress a report on the types and quality of jobs created or retained through assistance provided pursuant to Title 1 of the Housing and Community Development Act of 1974 and the extent to which projects and activities assisted under that title enhances the upward mobility and future earning capacity of low and moderate income persons who are benefited by such projects and activities.

SECTION 105(g): Micro-enterprise and Small Business Program Requirements - in developing program requirements and providing assistance pursuant to paragraph (17) of section (A) to a micro-enterprise or small business, the Secretary shall:

- (1) Take into account the special needs and limitations arising from the size of the entity; and
- (2) Not consider training, technical assistance, or other support services costs provided to small businesses or micro-enterprises or to grantees and sub-grantees to develop the capacity to provide such assistance, as planning cost pursuant to section 105 (A) (12) or an administrative cost pursuant to section 105 (A) (13).

SECTION 108(a): Guarantee of Loans - The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to guarantee and make commitments to guarantee, only to such extent or in such amounts as provided in appropriation Acts, the notes or other obligations issued by units of general or local government, or by public agencies designated by such units of general local government, for the purposes of financing

- (1) Acquisition of real property or the rehabilitation of real property owned by the unit of general government;
- (2) housing rehabilitation;
- (3) economic development activities; and
- (4) construction of public works and facilities and other activities as permitted in the act. Administration and planning funds are subject to normal CDBG requirements.

F. INELIGIBLE GRANT ACTIVITIES

The general rule is that any activity not authorized under the CDBG regulations is ineligible to be assisted with CDBG funds.

The following activities may not be assisted with CDBG funds (refer to 24 CFR Part 500 for additional specifics):

1. Buildings, or portions thereof, used for the general conduct of government. This does not include, however, the removal of architectural barriers involving any such building.
2. General government expenses (expenses required to carry out the regular responsibilities of the unit of general local government).
3. Political Activities. CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities.

Special Provisions:

1. Purchase of equipment.

- a. **The purchase of construction equipment is not permitted.** However, compensation for the use of such equipment through leasing, depreciation, or use allowances pursuant to specific OMB Circulars as applicable for an otherwise eligible activity is an eligible use of CDBG funds.
- b. **The purchase of fire protection equipment is eligible** as it is considered to be an integral part of a public facility.
- c. **The purchase of equipment, fixtures, personal property is generally ineligible** unless it's an integral structural fixture or part of an administration or public service activity.

1. Operating and Maintenance expenses are ineligible – the general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. **Specific exceptions to this general rule are operating and maintenance expenses associated with office space for program staff carrying out the CDBG program. Examples of ineligible expenses are:**

- a. Maintenance and repair of publicly owned streets, parks, playgrounds, water and sewer facilities, neighborhood facilities, senior centers, centers for persons with disabilities, parking and other public facilities and improvements.
- b. Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

2. New housing construction is not allowed except

- a. as provided under last resort housing provisions;
- b. housing constructed under Section 17 of the United States Housing Act of 1937;
- c. when carried out by a community based development organization (CBDO) pursuant to a neighborhood revitalization project, an economic development project, or energy conservation project.

3. Income payments, meaning a series of subsistence type grant payments made to an individual or family for items such as food, clothing, housing (*rent or mortgage), or

utilities are not permitted, this excludes emergency grant payments made over a period of up to three consecutive months.

5. Per the faith-based initiative, religious organizations are eligible to apply for CDBG funds on the same basis as other eligible organizations, such as non-profits and require sponsorship from an eligible jurisdiction. Organizations may not use CDBG funding for inherently religious activities, such as worship, religious instruction or proselytizing. Funds may not be used on a structure used inherently for religious activities or for organizations that discriminate based on religion.